

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JACQUES FEARENCE, V51385,)	
)	
Petitioner,)	No. C 14-1270 CRB (PR)
)	
vs.)	ORDER TO SHOW CAUSE
)	
R. GROUNDS, Warden,)	(Dkt. #4 & 5)
)	
Respondent.)	
_____)	

Petitioner, a state prisoner incarcerated at Salinas Valley State Prison (SVSP), has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a prison disciplinary panel's finding that he was in possession of a controlled substance in prison and subsequent assessment of 130 days of time credit. Petitioner specifically claims that the panel's denial of his request to present a witness at the hearing deprived him of an opportunity to present an adequate defense in violation of his procedural due process rights under Wolff v. McDonell, 418 U.S. 539 (1974).

Petitioner first presented his claim in Fearence v. Grounds, No. C 13-1372 CRB (PR) (N.D. Cal. filed Mar. 27, 2013). The claim involved a January 20, 2012 rules violation that resulted in a guilty finding and assessment of 130 days of time credit, but which was ordered reissued and reheard, and the subsequent August 23, 2012 rules violation that again resulted in a guilty finding and

1 assessment of 130 days of time credit. The court dismissed the January 20, 2012
2 rules violation claim as moot and the August 23, 2012 rules violation claim for
3 failure to exhaust state court remedies. But the court made clear that the
4 dismissal of the August 23, 2012 rules violation claim was without prejudice to
5 petitioner filing a new federal habeas petition after exhausting state court
6 remedies regarding the August 23, 2012 rules violation claim.

7 Pursuant to the court's instructions, petitioner brings his August 23, 2012
8 rules violation claim in a new federal habeas petition after the Supreme Court of
9 California summarily denied the claim on February 26, 2014. See Dkt. #4 at 48.¹
10 Liberally construed, petitioner's claim – that the panel's denial of his request to
11 present a witness at the hearing on the August 13, 2012 rules violation deprived
12 him of an opportunity to present an adequate defense under Wolff v. McDonnell,
13 418 U.S. 539 (1974) – appears cognizable under § 2254 and merits an answer
14 from respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001)
15 (federal courts must construe pro se petitions for writs of habeas corpus
16 liberally).

17 For the foregoing reasons and for good cause shown,

18 1. Petitioner's request to proceed in forma pauperis (dkt. #5) is
19 GRANTED.

20 2. The clerk shall serve by certified mail a copy of this order and the
21 First Amended Petition and all attachments thereto on respondent and
22 respondent's attorney, the Attorney General of the State of California. The clerk
23 also shall serve a copy of this order on petitioner.

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26 ¹Petitioner's motion for leave to file an amended petition (dkt. #4) is
27 GRANTED. The clerk is instructed to file the proposed amended petition (dkt. #4 at 2-
28 49) as the operative First Amended Petition in this case.

